

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Brady Wind, LLC
Brady Wind Energy Center – Stark County
Siting Application**

Case No. PU-15-690

**Brady Wind II, LLC
Brady II Wind Energy Center – Hettinger & Stark
Siting Application**

Case No. PU-16-042

ORDER ON CONSENT AGREEMENT

March 4, 2020

Preliminary Statement

On January 3, 2020, Commission Advocacy Staff (Staff) sent a Notice of Noncompliance to Brady Wind, LLC (Brady I) alleging a violation by Brady I of North Dakota Century Code (N.D.C.C.) section 49-22-16.4(2) and North Dakota Administrative Code (N.D.A.C.) section 69-06-11-02(1).

Also on January 3, 2020, Staff sent a Notice of Noncompliance to Brady Wind II, LLC (Brady II) alleging a violation by Brady II of North Dakota Century Code (N.D.C.C.) section 49-22-16.4(2) and North Dakota Administrative Code (N.D.A.C.) section 69-06-11-02(1).

On January 3, 2020, Brady I provided a status update regarding the installation of an Aircraft Detection Lighting System (ADLS) at the Brady Wind Energy Center and the Brady II Wind Energy Center.

On February 10, 2020, Brady I filed an affidavit of Daniel Gerard in response to the January 3 Notice of Noncompliance.

Also on February 10, 2020, Brady II filed an affidavit of Daniel Gerard in response to the January 3 Notice of Noncompliance.

On February 19, 2020, a Consent Agreement between Staff, Brady I and Brady II was filed for the resolution of the Notice of Noncompliance.

Discussion

Brady I and Brady II are foreign limited liability companies with principal address of 700 Universe Boulevard, Juno Beach, Florida, 33408.

On June 16, 2016, the North Dakota Public Service Commission adopted an Order granting Brady I a Certificate of Site Compatibility for the construction, operation, and maintenance of the Brady Wind Energy Center located in Stark County (Case No. PU-15-690).

On July 6, 2016, the Commission adopted an Order granting Brady II a Certificate of Site Compatibility for the construction, operation, and maintenance of the Brady II Wind Energy Center located in Stark and Hettinger Counties (Case No. PU-16-042).

Subsequent to issuance of the Commission's Orders, N.D.C.C. section 49-22-16.4 was enacted and became effective on August 1, 2017. Section 49-22-16.4 established a new compliance deadline, requiring that facilities permitted by the Commission after June 5, 2016 be "equipped with a functioning light-mitigating technology system" by December 31, 2019.

On July 1, 2018, N.D.A.C. § 69-06-11-02(1) became effective. Section 69-06-11-02(1) requires that facilities permitted by the Commission after June 5, 2016 be equipped with a functioning light-mitigating technology in compliance with this chapter by December 31, 2019.

Staff alleges a violation by Brady I of N.D.C.C. section 49-22-16.4(2) and N.D.A.C. section 69-06-11-02(1) for failure to equip the Brady Wind Energy Center with a functioning light-mitigating technology system by December 31, 2019.

Staff alleges a violation by Brady II of N.D.C.C. section 49-22-16.4(2) and N.D.A.C. section 69-06-11-02(1) for failure to equip the Brady II Wind Energy Center with a functioning light-mitigating technology system by December 31, 2019.

Brady I, Brady II and Staff engaged in good faith settlement discussions resulting in a Consent Agreement intended to avoid further administrative proceedings or litigation.

Brady I agrees to be assessed a civil penalty of \$5,000 payable to the North Dakota Public Service Commission within ten business days of service of an Order approving the Consent Agreement.

Brady II agrees to be assessed a civil penalty of \$5,000 payable to the North Dakota Public Service Commission within ten business days of service of an Order approving the Consent Agreement.

The affidavit of Daniel Gerard, Vice President of Brady Wind, outlined several mitigating factors for the company failing to meet the December 31, 2019 deadline:

1. Brady Wind realized a four-month delay in receiving the radar units necessary to operate the system from the sole FAA-approved ADLS vendor at the time. The radar units were scheduled to arrive in August 2019 and the actual delivery date was December 19, 2019. This left a very limited window in which to complete installation of the system.
2. Brady Wind, at the recommendation of its vendor, elected to create a redundant communications path to provide a secondary means of ensuring the turbine communications system was operating. This additional safety measure moved the company two days beyond the December 31 deadline.

Having considered this matter, the Commission finds the Consent Agreement filed on February 19, 2019, with modified fines of \$1,000 for Brady Wind I and \$1,000 for Brady Wind II is reasonable and acceptable. Therefore, the Commission issues the following:

Order

The Commission Orders:

1. The Consent Agreement of Brady I, Brady II and Staff, filed February 19, 2020, is approved. A copy of the Consent Agreement is attached to and made a part of this Order.
2. Brady I is assessed a civil penalty of \$1,000.
3. Brady I shall remit \$1,000 civil penalty, payable to the North Dakota Public Service Commission within ten business days of service of this Order.
4. Brady II is assessed a civil penalty of \$1,000.
5. Brady II shall remit \$1,000 civil penalty, payable to the North Dakota Public Service Commission within ten business days of service of this Order.

PUBLIC SERVICE COMMISSION



Julie Fedorchak
Commissioner



Brian Kroshus
Chairman



Randy Christmann
Commissioner

**BEFORE THE NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Brady Wind, LLC
Brady Wind Energy Center
Stark County**

Case No. PU-15-690

**Brady Wind II, LLC
Brady Wind II Energy Center
Stark & Hettinger Counties**

Case No. PU-16-042

CONSENT AGREEMENT

Preliminary Statement

This Consent Agreement is entered into by and between Brady Wind, LLC, Brady Wind II, LLC (collectively “Brady I & II”), and the Public Service Commission Advocacy Staff (“Staff”) (together, the “Parties”) for resolution of the Notices of Noncompliance filed by Staff as Docket No. 187 in Case No. PU-15-690 and as Docket No. 136 in Case No. PU-16-042 regarding light-mitigating technology at the Brady Wind Energy Center and Brady II Wind Energy Center (collectively, the “Facilities”). Due to their proximity in location, the Facilities utilize a single Aircraft Detection Lighting System (“ADLS”), which consists of three separate radar towers. Therefore, the Parties have entered into a consolidated Consent Agreement.

Discussion

Background

1. On June 16, 2016, the North Dakota Public Service Commission (“Commission”) adopted an Order granting Brady Wind, LLC Certificate of Site Compatibility No. 48 for the construction, operation, and maintenance of the 150 megawatt (“MW”) Brady Wind Energy Center located in Stark County (Case No. PU-15-690).

2. On July 6, 2016, the Commission adopted an Order granting Brady Wind II, LLC Certificate of Site Compatibility No. 50 for the construction, operation, and maintenance of the 150 MW Brady II Wind Energy Center located in Stark and Hettinger Counties (Case No. PU-16-042).

3. Finding of Fact paragraph 46 in the Commission's June 16 and July 6 Orders stated that subject to Federal Aviation Administration approval, Brady I & II will use commercially reasonable efforts to install ADLS or other technology suitable to the Commission as soon as practicable after commercial operation, and in any event by no later than December 31, 2018.
4. Subsequent to issuance of the Commission's Orders, N.D.C.C. § 49-22-16.4 was enacted and became effective on August 1, 2017. Section 49-22-16.4 established a new compliance deadline, requiring that facilities permitted by the Commission after June 5, 2016 be equipped with a functioning light-mitigating technology system by December 31, 2019.
5. On December 11, 2019, Staff inquired as to the status of light-mitigating technology at the Facilities, and requested Brady I & II to provide information by December 31, 2019.
6. On December 31, Brady I & II filed updates with the Commission indicating that the ADLS had been installed and test flights and final software tuning were occurring that afternoon.
7. On January 2, 2020, Brady I & II notified the Commission that it was completing additional safety testing of the ADLS.
8. On January 3, 2020, Brady I & II notified the Commission that ADLS had been fully activated at the Facilities on January 2.
9. On January 3, 2020, Staff issued Notices of Noncompliance to Brady I & II alleging noncompliance with the provisions of N.D.C.C. § 49-22-16.4(2) and N.D. Admin Code § 69-06-11-02(1), filed as Docket No. 187 in Case No. PU-15-690 and Docket No. 136 in Case No. PU-16-042 (collectively, the "Notices").
10. On February 10, 2020, in response to the Notices, Brady I & II filed information that outlines the history of Brady I & II's ADLS installation efforts and includes additional details regarding Brady I & II's previous December 31 and January 2 ADLS status updates filed with the Commission. *See*, Affidavit of Daniel Gerard.

Terms

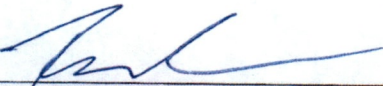
11. Brady I & II and Staff engaged in good faith settlement discussions resulting in this Consent Agreement. Having agreed that settlement of the Notices will avoid further administrative proceedings or litigation and that entry of this Consent Agreement is the most appropriate means of resolving the Notices, Staff and Brady I & II agree to resolve the alleged non-compliance in the Notices on the following terms:

- a. Nothing in this Consent Agreement shall be considered as an admission of any wrongdoing, violation, omission, or fault with respect to the Notices.
- b. Brady I agrees to make payable to the North Dakota Public Service Commission a total collective assessment of \$5,000, within 10 business days of service of an Order approving the Consent Agreement ("Order"). Brady II agrees to make payable to the North Dakota Public Service Commission a total collective assessment of \$5,000, within 10 business days of service of an Order. Staff agrees no other proceeding will be initiated against Brady I & II based on the violations alleged in the Notices and no other remedy will be sought based on the violations alleged in the Notices.
- c. If the Consent Agreement is approved by the Commission, Brady I & II agree not to contest Staff's allegations with respect to the Notices, and Brady I & II expressly waive any further procedural requirements with respect to the adoption of the Order approving the Consent Agreement. Provided the Commission approves this Consent Agreement and adopts an Order consistent with it, Brady I & II waives its right to contest the validity of this Consent Agreement and the Order, and waives all rights to administrative or judicial hearings or appeals of the Case.
- d. If the Commission's Order modifies or conditions approval of this Consent Agreement, it shall be deemed terminated if any settling party files a letter with the Commission within three business days of notice of such an Order stating that a condition of modification to the Consent Agreement is unacceptable to such party.
- e. There are no covenants, promises, undertakings, or understandings other than specifically set forth in this Consent Agreement of Order.
- f. This agreement may be executed in counterparts and duplicate copies, each which shall be deemed to be an original, and which, when taken together, shall constitute one and the same instrument.
- g. The undersigned on behalf of Brady I & II, is authorized to act on behalf of each entity, and bind Brady I & II for the purposes of this Consent Agreement, and knows and fully understands this Consent Agreement's content and effect.

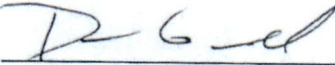
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Dated this 19th day of February, 2020.

Public Service Commission
Advocacy Staff

By: 
Name: Brian Johnson
Title: Special Assistant Attorney General for PSC

Dated this 17th day of February, 2020.

By: 
Name: Daniel Gerard
Brady Wind, LLC
Title: Vice President
Brady Wind II, LLC
Title: Vice President